

Special Session

Agenda Item #	1
Meeting Date	30 July 2007
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Approved By	Barbara B. Matthews <i>BBM</i> City Manager

Discussion Item	Second Reading of Ordinance Amending <i>Takoma Park Code Chapter 6.20 Rent Stabilization</i>
Background	<p>This is the second reading of an ordinance amending the City's current rent stabilization law.</p> <p>The more significant changes to the current law, considered and approved by the Council on July 23, 2007 during its first reading of the proposed ordinance, include the following:</p> <ul style="list-style-type: none"> Any building located on a platted lot which contains only one dwelling unit would not be subject to many of the requirements of the rent stabilization law, regardless of its ownership. This would generally include single family houses and town houses. (In contrast, under the current ordinance, such units would be exempted only if the owner does not own more than a single rental unit.) Rental units located within condominium facilities would no longer be exempt from the requirements of rent stabilization. Registered accessory apartments would continue to be exempt. The frequency of rent increases instituted by landlords for occupied rental units would be regulated. Landlords would be required to give their tenants at least two months' written notice of any rent increase. Two-unit owner-occupied rental facilities would be granted an exemption, upon application, from the requirements of rent stabilization, except that the frequency of rent increases for an occupied unit would be limited to once in any 12-month period. The landlord would be required to submit annual rent reports. To qualify for the exemption, an owner would be required to document that the dwelling unit had been his/her primary residence for a period of at least 24 consecutive months. The Annual Rent Stabilization Allowance would be increased to 100% of the percentage increase in the Consumer Price Index (All Urban Consumer all items, Washington-Baltimore) (CPI). A new Fair Return rent increase petition would be instituted and the current capital improvement increases eliminated. Capital expenses would be considered as amortized operating expenses within the Fair Return petition process rather than as a basis for separate rent adjustments as is currently provided by law. Landlords who had commenced a capital project prior to the second reading of the amendment would be permitted to file for such an increase under the current law until December 1, 2007.

	<ul style="list-style-type: none"> Under the fair return standard (designated as the "hardship" standard under the current ordinance), a fair net operating income would be equal to the base year net operating income increased by the 70% percent of the percentage increase in the CPI from the base year to 2007 and 100% of the percentage increase in the CPI from 2007 to the year of the application. In contrast under the current ordinance, a fair net operating income is equal to the base period net operating income increase by 50% of the percentage increase in the CPI since the base year. <p>Staff has continued its review of the proposed ordinance and made further, albeit minor revisions to the draft to clarify the language, delete redundant text and ensure that the ordinance accurately reflects the policies of the Council as they relate to the regulation of rental units in the community. These changes are noted in the text of the accompanying draft.</p> <p>If adopted, the ordinance would become effective December 1, 2007, with the exception that the repeal of the provisions authorizing separate passthroughs for capital improvements would go into effect immediately.</p>
Policy	<p>"To complete recodification of <i>City Code Chapter 6.20 Rent Stabilization</i>,"</p> <p><i>Affordable Housing Policy and Action Plan (July 2005)</i></p>
Fiscal Impact	N/A
Attachments	Ordinance #2007-40 Amending <i>Takoma Park Code Chapter 6.20 Rent Stabilization</i> (Revised July 27, 2007)
Recommendation	To approve the second reading of the proposed ordinance.
Special Consideration	<p>The proposed ordinance does not provide for a utility surcharge considered by the Council. The research required to complete an analysis of the impact of recent increases in utility costs is underway and is scheduled to be completed this fall. The results of this analysis, and any recommended amendments to the rent stabilization law, will be presented to the Council for consideration at a later date.</p>

Requirements of Rent Stabilization Ordinance	Single Family Houses	Registered Accessory Units	Condominium Units	Two-Unit Rental Facility	Multi-Family Rental Facility	EXEMPTED Rental Units and Rental Facilities
Regulated by Ordinance	Limited	Limited	Yes	Yes	Yes	
Exemptions						
Permitted Exemptions	None	None	Rental units leased under tenant based rental assistance program	Owner Occupied	(1) Affordable Housing Facility/Unit (2) Newly Constructed Rental Unit	
Application Required	NA	NA	Yes	Yes	Yes	
Length of Exemption	NA	NA	Lesser of twelve months or term of the contract	Twelve months	(1) Term of Regulatory Agreement (2) Five Years	
Renewal Options	NA	NA	Yes	Yes	Yes	
Rent Restrictions						
Amount of Rent Increase	Not Regulated	Not Regulated	100% of CPI	100% of CPI	100% of CPI	Not Regulated
Fair Return Increases	Not Available	Not Available	Petition Required	Petition Required	Petition Required	Not Available
Notification Requirements	Two Months	Two Months	Two Months	Two Months	Two Months	Two Months
Frequency of Increases for Occupied Rental Units	Rent may be increased once in any twelve month period	Rent may be increased once in any twelve month period	Rent may be increased once in any twelve month period (*)	Rent may be increased once in any twelve month period (*)	Rent may be increased once in any twelve month period (*)	Rent may be increased once in any twelve month period
Reporting Requirements						
Annual Rent Report	No	No	Yes	Yes	Yes	Yes

(*) Excepting Fair Return Rent Increases

Chapter 6.20 RENT STABILIZATION*

6.20.010 Application of rent stabilization -- Scope, rent increases, notification requirements, ~~annual reporting, owner-occupied condominiums, rental units not subject to rent stabilization as of July 1, 2007.~~

A. Application of Rent Stabilization.

The provisions of this chapter shall apply to all residential rental units except as provided in Sections 6.20.020, 6.20.030 and 6.20.040.

B. Rents – Rent Increases, Frequency, and Notification Requirements.

1. Rent Increases.

Rent increases shall be limited to the rent increase amounts authorized by this chapter for regulated rental units.

2. Frequency of Rent Increases.

~~Rent increases authorized by this chapter for any regulated rental unit may be increased as authorized by this chapter.~~ Rents shall not be increased more frequently than permitted by this Chapter.

3. Notice of Rent Increases.

Notification of any rent increase authorized by this chapter shall be provided in writing to the tenant at least two months prior to the date the rent increase is to take effect.

C. Reporting of Rents.

Landlords must file an annual rent report with the Department on a form prescribed by the Department in accordance with Section 6.20.080.

~~C. Reset of Base Rent for Owner-Occupied Condominiums.~~

~~When the owner or successive owners of a condominium unit occupies the unit for at least 24 consecutive months as his or her principal residence, then the owner may charge market rent for the unit when the owner next rents the unit to a tenant. The rent the owner charges the tenant shall establish the base rent for the unit until the owner again occupies the unit for at least 24 consecutive months.~~

~~D. Establishment of Base Rent for Rental Units Not Subject to Rent Stabilization on July 1, 2007.~~

~~For rental units that were not subject to rent stabilization on July 1, 2007, that become subject to rent stabilization pursuant to Ordinance No. 2007-40, the base rent shall be the monthly rent charged for the unit when the unit is first rented to a tenant after July 1, 2007.~~

6.20.020 Buildings exempted from rent stabilization without application for exemption.

A. Scope of Exemptions.

The provisions of this chapter shall not be applicable to the following:

1. Any unit in a licensed facility, the primary purpose of which is the diagnosis, cure, mitigation and treatment of illnesses;
2. Any unit in a facility owned or leased by an organization exempt from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, the primary purpose of which is to provide temporary sanctuary or shelter for qualified clients, provided that the organization has notified the clients residing in the facility of the temporary nature of their housing at the inception of their residence;
3. Any owner-occupied group house;
4. Religious facilities such as churches, synagogues, parsonages, rectories, convents and parish homes;
5. Transient facilities such as hotels, motels, tourist homes, and bed and breakfast facilities; and
6. School dormitories.

6.20.030 Rental facilities granted partial exemption from rent stabilization without application for exemption.

A. Scope of Exemptions.

The provisions of this chapter shall not be applicable to the following rental facilities except as provided in paragraph B and C of this section:

1. Any building on a lot that contains only one dwelling unit; and
2. Any accessory apartment for which the Montgomery County Planning Board has granted a special exception.

B. Frequency of Rent Increases.

The rents for rental facilities and rental units described in paragraph A of this section may be increased only once within a twelve month period.

C. Notification Requirements.

Notification of any rent increase for rental units described in paragraph A of this section shall be provided in writing to the tenant at least two months prior to the date the rent increase is to take effect.

6.20.040 Rental facilities and rental units exempt from rent stabilization pursuant to an application for a grant of exemption.

A. Grant of Exemption.

The Department shall, upon application of the owner, grant an exemption from this chapter for the following rental units and rental facilities:

1. Rental units leased to tenants assisted under federal Tenant Based Assistance Programs under 42 U.S.C. § § 1437f and 11403 et. seq. or similar federally funded rent subsidy program. However, this exemption shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Montgomery County Housing Opportunities Commission or successor agency.
2. Any rental facility that is subject to a regulatory agreement with a governmental agency that controls the rent levels of one or more rental units so that they are available only to low and moderate income tenants.
3. Newly constructed rental units. For a period of five years after the issuance of a rental license, any newly constructed rental units first offered for rent after July 1, 2006.
 - a. Newly constructed rental unit shall mean any rental unit constructed that results in a net gain in the number of rental units at a property over the number of rental units at the property as of July 1, 2006, plus any rental units already added to the property, provided that the size of an existing rental unit or the indoor common areas of the rental facility is not reduced. The reconfiguration, renovation, change in description, or change in identification of a rental unit shall not result in a newly constructed rental unit.
 - b. Replacement rental units not exempt.

- i. The maximum allowable rents applicable to pre-existing rental units shall be applicable to rental units that replace those units.
 - ii. A rental unit is a replacement rental unit unless the unit is a newly constructed rental unit as defined in this paragraph A.3.a of this section.
 - iii. If a replacement rental unit is smaller than the unit it replaces, the maximum allowable rent for the replacement unit shall be reduced by a percentage equal to the reduction in size of the unit.
4. All rental units in a building with 2 ~~or 3~~ dwelling units ~~when-in which~~ the owner occupies one or more of the units as his or her principal residence, provided that the owner occupancy by the current owner or successive owners has been continuous and bona fide for a period of at least ~~two years~~ 24 months at the time a petition for an exemption is filed.

B. Termination of Exemption.

1. Exemptions granted pursuant to paragraphs A.1 ~~and A4~~ of this section shall expire after one year or when the conditions entitling the facility to an exemption cease to exist, whichever shall first occur. The exemptions are renewable annually upon re-application. Upon the termination of an exemption, the rental unit shall be subject to all of the provisions of this chapter.
2. Exemptions granted pursuant to paragraph A.2 of this section shall expire upon the termination of the agreement with the governmental agency entitling the rental facility to the exemption.

C. Rents upon Termination of Exemption.

1. For rental facilities and rental units receiving an exemption pursuant to paragraphs A.1 and A.2 of this section, upon the termination of the exemption, the base rent for the units and the reference point from which the rent ceiling shall be adjusted in accordance with ~~Section 06.20.050 this chapter~~ shall be the ~~maximum~~-allowable rent for each unit at the time the exemption commenced plus the annual rent stabilization allowance for each year that the unit was exempt.
2. For rental facilities and rental units receiving an exemption pursuant to paragraphs A.3 and A.4 of this section, upon the termination of the exemption, the base rent for the units and the reference point from which the rent ceiling shall be adjusted in accordance with ~~Section 06.20.050 this chapter~~ shall be the rent for each unit set forth in the most recent annual rent report ~~for each unit~~ preceding the expiration of the exemption. For any unit is not rented when the exemption period terminates, the base rent shall be the rent charged when the unit is first rented to a tenant. If the actual rent paid by a tenant differs

from the rent stated in the rent report or the lease, then the actual rent shall be the base rent.

D. Frequency of Rent Increases.

The rents of occupied rental units exempt from rent stabilization under this section may be increased once within any twelve month period.

E. Notice of Rent Increases.

For rental units receiving an exemption pursuant to paragraphs A.2, A. 3, and A.4 of this section, a landlord shall not increase or attempt to increase the rent for any rental unit without having first given the tenant living therein at least two months' written notice of the increase.

F. Annual Rent Reports.

Landlords must file annual rent reports for all rental units that are exempt from rent control under this section.

6.20.050 Establishment of Base Rent for Certain Units.

A. Reset of Base Rent for Owner-Occupied Condominiums.

When the owner or successive owners of a condominium unit occupies the unit for at least 24 consecutive months as his or her principal residence, then the owner may charge market rent for the unit when the owner next rents the unit to a tenant. The rent the owner charges the tenant shall establish the base rent for the unit until the owner again occupies the unit for at least 24 consecutive months. If the actual rent paid by the tenant differs from the rent stated in the lease, then the actual rent paid by the tenant shall be the base rent.

B. Rents Following Sale of a Condominium Unit.

The owner of a condominium unit that purchases a condominium unit in a bona fide arms length transaction may charge market rent for the unit when the owner first rents the unit to a tenant after purchasing the unit. The rent the owner charges the tenant shall establish the base rent for the unit until the owner occupies the unit for at least 24 consecutive months. If the actual rent paid by the tenant differs from the rent stated in the lease, then the actual rent paid by the tenant shall be the base rent.

C. Establishment of Base Rent for Rental Units Not Subject to Rent Stabilization on July 1, 2007.

For rental units that were not subject to rent stabilization on July 1, 2007, that become subject to rent stabilization pursuant to Ordinance No. 2007-40, the base rent shall be the rent charged for

the unit when the unit is first rented to a tenant after July 1, 2007. If the actual rent paid by the tenant differs from the rent stated in the lease, then the actual rent paid by the tenant shall be the base rent.

6.20.0560 Annual rent increases.

A. Annual Rent Stabilization Allowance.

1. ~~At any point during any twelve month period, commencing on July 1 of each year, the rent of a unit may be increased over the rent charged as of June 30 by the percentage increase in the Consumer Price Index. The Department shall calculate an annual rent stabilization allowance and provide notice of the allowance to all landlords. The isrent stabilization allowance shall equal the~~ increase shall be measured by the percentage increase in the Consumer Price Index-All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) from March in the preceding year to March in the current year. The CPI shall be the CPI published as of March in each year.
2. At any point during any twelve month period, commencing on July 1 of each year, the rent of a unit may be increased over the rent charged as of June 30 by the annual rent stabilization allowance.
32. ~~Rent increases which are permitted pursuant to this section but are not implemented may be "banked" in accordance with Section 6.20.060 of this chapter~~ Annual rent stabilization allowances that a landlord does not assess to the current tenant may be set aside and implemented in accordance with 6.20.070 when the unit becomes vacant. .

B. Frequency of Rent Increases for Occupied Rental Units.

1. Only one rent increase pursuant to paragraph A.1 of this section shall be permitted within a twelve month period.
2. During the pendency of a fair return petition to increase rents above the rent stabilization allowance, rent increases up to the rent stabilization allowance may be taken in accordance with paragraph B.1 of this section. If an additional rent increase pursuant to a petition is subsequently approved by the Commission, the rent increase may be taken pursuant to the terms and the conditions of the Commission's administrative decision and final order.

C. Frequency of Rent Increases for Vacant Rental Units.

1. ~~The Rent increases~~ for vacant rental units may be ~~taken~~ increased by the annual rent stabilization allowance prior to the leasing of the rental unit in accordance with paragraphs ~~A.1 and A.2~~ of this section.

D. Notice of Annual Rent Increases.

1. A landlord shall not increase or attempt to increase the rent for any occupied rental unit without having first given the tenant living therein at least two months' written notice of the increase, ~~except in such a case where a rent escalator clause as provided in Section 6.20.070 of this chapter is contained within the lease.~~
 - ~~a. If, during the pendency of a notice of a rent increase, the rent stabilization allowance is raised or lowered by the City, a landlord may charge rent up to the rent stabilization allowance in effect on the date the notice was given.~~
 - ~~b. In any case where a rent escalator clause is contained within the lease, written notice of the rent increase must be given to the tenant not less than one month or more than two months prior to the effective date of the rent increase in accordance with Section 6.20.070(B) of this chapter.~~
2. Notice of a rent increase shall be in the form and manner prescribed by Department regulations.

6.20.0670. "Banking" of authorized annual rent increases

A. Banking of Unused Rent Stabilization Allowances Authorized After 1992.

Notwithstanding the provisions of Section 6.20.0650, a landlord may increase the rent for a vacant rental unit by the actual dollar amount of any annual rent stabilization allowances which were not charged to the tenant vacating the rental unit (hereinafter "unused rent stabilization increases"). Such increase may be taken if the rental unit became vacant as a result of a voluntary termination of the tenancy by the tenant or a termination of the tenancy by the landlord for cause. This rent increase may be in addition to any rent stabilization allowance increase ~~which that~~ the landlord may impose on or after 12 months from the date of the last rent stabilization allowance increase for that rental unit.

B. Banking of Unused Rent Stabilization Allowances Authorized Prior to 1992.

- a. Before a landlord may increase the rent for a vacant rental unit by the amount of any unused rent stabilization increases for any year or years prior to February 1, 1992, the landlord must submit verifiable documentation to the Department showing that the unused rent stabilization increases were not previously charged to the rental unit. Examples of verifiable documentation are rent ledgers, copies of leases, and rent reports.
- b. The Department must approve such documentation in writing before the landlord may increase the rent for a vacant rental unit by the amount of any unused rent stabilization increases for any year or years prior to February 1, 1992. The required documentation

must be submitted 60 days in advance of the date of the proposed rent increase and must include the name and contact information of the tenant vacating the affected unit

~~6.20.070 Rent escalator clauses.~~

~~A. Rent Increases Permitted by Rent Escalator Clause.~~

~~For occupied rental units subject to the provisions of this chapter, a landlord may incorporate a rent escalator clause into the lease providing for a rent increase to take effect on or after twelve months from the date of the last rent increase for that rental unit. The rent escalator clause may provide for a rent increase not to exceed the annual rent increase allowance in effect at the time the rent increase is taken and/or the rent increase granted by the Commission pursuant to a fair return petition.~~

~~B. Notification of Rent Increase.~~

~~No such rent increase shall take effect as a result of a rent escalator clause without the landlord having first given the tenant at least one month, but no more than two months written notice of the rent increase prior to the effective date of the rent increase. Such notice shall be in the form prescribed by Department regulations and shall be provided in addition to any notice of rent increase provided in the lease.~~

6.20.080 Annual reporting requirements.

A. Reporting Requirements.

On or before September 30 of each year, each landlord shall complete and submit to the Department a rent report for the twelve month period ending on the preceding June 30 on a form provided by and in the manner prescribed by Department regulations.

B. Penalty for Failure to Comply with Reporting Requirements.

Failure to file a complete or accurate rent report by September 30 of each year shall constitute a violation of this chapter unless an extension of time for good cause is granted by the Department.

6.20.090 Rent increases pursuant to a fair return petition.

A. Fair Return Rent Increase.

Landlords have a right to petition for a rent increase in order to obtain a fair return. A fair return rent increase is intended to protect tenants from unwarranted rent increases, while allowing rent levels which provide landlords with a fair return.

B. Standards for Rent Increases Pursuant to a Fair Return Petition.

1. ~~“Fair Return”.~~ Fair return –is defined as ~~“Base Year”~~ ~~“Net Operating Income”~~ adjusted by ~~75~~0% of the percentage increase in the Consumer Price Index (CPI) from the ~~Base Year~~ until 2007, and 100% of the percentage increase in the CPI since 2007.
2. ~~“Base Year”.~~ The landlord may select any of the following as the base year when petitioning for a fair return rent increase:
 - a. 1979, unless the property contains four or fewer ~~dwelling~~rental units.
 - b. 1987, if the property contains four or fewer rental units.
 - c. 1990
 - d. 2000
3. ~~“Current Year”.~~ The current year shall either be the calendar year or the fiscal year (July 1-June 30) immediately preceding the date that the application is filed.
4. ~~“Current Year CPI”.~~ If the current year is a calendar year, the current year CPI shall be the Annual CPI for that year. If the current year is a fiscal year, the current year CPI shall be the CPI for December within the twelve month period including the fiscal year.
5. ~~“Net Operating Income”.~~ Net operating income equals ~~“Gross Income”~~ minus ~~“Operating Expenses”~~.
6. ~~“Base Year Net Operating Income”.~~ The base year net operating income –may be calculated, at the landlord’s option, to equal 40% of the gross income of the rental facility in 1990.
7. ~~“Gross Income”.~~ Gross income is the annual scheduled rental income for the property based on the rents and fees (other than fees that are reimbursed by the tenants) the landlord was permitted to charge at the time of the application.
8. ~~“Operating Expenses”.~~ Operating expenses means ~~shall include~~ all reasonable operating and maintenance expenses.
 - a. Operating expenses shall include, but not be ing-but not limited to, the following:
 - ai. Utilities paid by the landlord, unless these costs are passed through to the tenants;
 - iib. Administrative expenses, such as advertising, legal fees, accounting fees, etc;

- iiie. Management fees, whether performed by the landlord or a property management firm;

It shall be presumed that management fees increased by the percentage increase in the CPI between the base year and the current year, unless the level of management services either increased or decreased during this period. Management fees shall not exceed 6% of gross income unless the landlord demonstrates by a preponderance of the evidence that a higher percentage is reasonable.

- div. Payroll;

- ve. Amortized cost of capital improvements;

An interest allowance shall be allowed on the cost of amortized capital expenses; the allowance shall be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the Federal Reserve Board bank prime loan rate as of the date of the initial submission of the petition plus 2% per annum.

- vi. Maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section.

- vii. Property taxes;

- viii. Licenses, government fees and other assessments;

- ix. Insurance costs;

- x. Reasonable operating and maintenance expenses do not include the following:

- i. Expenses for which the landlord has been or will be reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;

- ii. Payments made for mortgage expenses, either principal or interest;

- iii. ~~Judicial and administrative fines and penalties from noncompliance with Housing Code violations or COLTA Orders;~~

- iv. Damages paid to tenants as ordered by COLTA or the courts;

- v. Depreciation;

- ~~vi~~6. Late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental facility;
- ~~7~~vii. Membership fees in organizations established to influence legislation and regulations;
- ~~8~~viii. Contributions to lobbying efforts;
- ~~9~~ix. Contributions for legal fees in the prosecution of class-action cases;
- ~~10~~x. Political contributions for candidates for office;
- ~~xi~~11. Any expense for which the tenant has lawfully paid directly or indirectly;
- ~~12~~xii. Attorney's fees charged for services connected with counseling or litigation related to actions brought by the City under City regulations or Title 6, Housing, of this Code, as amended. This provision shall apply unless the landlord has prevailed in such an action brought by the City;
- ~~xiii~~13. Additional, expenses incurred as a result of unreasonably deferred maintenance; and
- ~~14~~xiv. Any expense incurred in conjunction with the purchase, sale, or financing of the rental facility, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.
- ~~kc~~. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

C. Rent Increase Petition Based on Fair Return Standard.

1. Form of Petition.

Whenever a landlord proposes a rent increase of more than the amount permitted by Section 6.20.05~~60~~ of this chapter, the landlord shall file a petition with the Commission on a form provided by the Department.

2. Required Submission of Income and Expense Information.

The landlord shall be required to submit income and expense information for the two years prior to the current year with the petition.

3. Petition Restrictions.

Petitions filed pursuant to this section must address an entire rental facility.

~~T~~The landlord filing a petition must own the rental facility for the entire Current Year.

4. Adjustments to Petition – Base Year Net Operating Income.

a. Adjustment of Base Year Net Operating Income by Commission.

It may be determined that the Base Year Net Operating Income yielded other than a fair return, in which case the base year Net Operating Income may be adjusted. In order to adjust the Base Year Net Operating Income, the Commission must make at least one of the following findings:

1. Base ~~Y~~year ~~N~~net ~~O~~perating ~~I~~income was abnormally low due to one of the following factors:
 - A. The landlord made substantial capital improvements which were not reflected in the base year rents and the landlord did not obtain a rent adjustment for these capital improvements;
 - B. Substantial repairs were made due to exceptional circumstances; or
 - C. Other expenses were unreasonably high, notwithstanding prudent business practice.
2. Base ~~Y~~year ~~R~~rents did not reflect market transaction(s), due to one or more of the following types of circumstances:
 - A. There was a special relationship between the landlord and tenant resulting in abnormally low rent charges (such as a family relationship);
 - B. The rents had not been increased for five years preceding the base year;
 - C. The tenant lawfully assumed maintenance responsibilities in exchange for low rent increases or no rent increases; or
 - D. Other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

b. Establishment of a New Base Year Net Operating Income – Prior Year Petitions.

The net operating income, income, and expenses, determined to be fair and reasonable pursuant to a prior petition for a fair return rent increase, shall constitute the base year income, expenses, and net operating income in the new petition.

5. Consideration of Fair Return -Petition by Commission.

a. Issuance of a Decision by the Commission.

The Commission shall, in good faith, endeavor to issue its preliminary administrative decision ruling on the request within 90 days of the review or hearing on the petition. Upon its determination of the rent increase to be granted to the landlord, the Commission shall issue a decision in accordance with Section 6.24.120 of this chapter and furnish a copy of the decision to the landlord.

b. Rejection of Petition.

1. The Commission shall not consider the landlord's fair return petition:

- A. Until the properly completed petition form, including required supporting documentation, has been submitted to the Commission;
- B. When the landlord has not properly registered the rental property with the City and/or when the landlord has outstanding fees or fines with the Department;
- C. When the landlord has not filed required rent reports for the 3 years prior to the filing date of the petition ~~with the Department~~, provided that the Commission may, at its discretion, waive the above requirement for good cause shown;
- D. When the landlord has failed to comply with a final order of the Commission concerning any rental unit owned by the landlord in the City. However, the failure to comply with an order of the Commission shall not constitute a basis to decline to consider the landlord's request if the order has been appealed to the Circuit Court and no decision has been rendered on appeal.

2. If the Commission declines to consider the landlord's request it shall provide a written explanation for its action.

6. Ceiling on Fair Return Adjustments.

a. Fair Return Rent Increases on Occupied Rental Units.

Fair return rent increases shall not exceed 15% in any 12 month period. If the Commission awards a fair return rent increase greater than 15%, then the landlord

~~may impose the remainder of the increase in subsequent years in increments not to exceed 15%. If, after the Commission's calculations, rent increases greater than 15% over the increases authorized pursuant to the rent stabilization allowance are necessary to result in the increases approved by the Commission pursuant to paragraph B of this section, the necessary increases shall be phased in over a term of more than one year until the full increases awarded by the Commission have been taken. If a landlord's required rent increase is phased in over the term of more than one year, the subsequent rent increases may be in addition to an increase within the rent stabilization allowance in effect in subsequent years.~~

b. Fair Return Rent Increases on Vacant Rental Units.

If the Commission determines that a rental unit requiring an increase of more than 15% is vacant or if the unit becomes vacant before the required rent increase has been taken in full, the Commission shall allow the required increase for that unit to be taken in one year or upon the vacancy of that unit, provided the unit became vacant as a result of a voluntary termination by the tenant or a termination of the tenancy by the landlord for cause.

7. Notification Requirements.

a. Notice of Petition for a Rent Increase.

The landlord shall provide written notification to each tenant affected by a proposed rent increase within one week after the filing date of the petition. Such notification shall include a copy of the petition form and a listing of all requested rent increases.

b. Notice of a Rent Increase Granted Pursuant to a Rent Increase Petition.

The landlord shall provide written notice to each affected tenant of the rent increase which has been authorized by the Commission, no less than two months prior to the date the proposed increase is to take effect. Said increase shall be contingent on the decision of the Commission becoming final in accordance with Section 6.24.120 and 6.24.130 of this chapter.

8. Rollbacks - Bad Faith Fair Return Petitions.

a. Authority to Require Rollback.

If, upon consideration of a fair return petition, the Commission finds that the adjusted base year net operating income included in the petition is less than the landlord's actual petition year net operating income and the fair return petition was filed in bad faith, the Commission may require the landlord to roll back the rents changed on the rental units covered by the petition to result in a net operating income equal to the adjusted base year net operating income.

b. Purpose of Rollbacks.

The purpose of the rollback provision in this subsection is to ensure that fair return petitions are filed in good faith, that the landlord reviews the records of the rental property for which rent increases are sought to ensure that a rent increase is justified under this section and to balance both the tenant and the landlord interests in each petition to increase rents above the rent stabilization allowance.

c. Definition of Bad Faith.

1. Bad faith can be found, but is not limited to, instances in which the landlord:

- A. listed expenses for repairs or services never performed;
- B. materially misrepresented expenses claimed;
- C. knowingly filed a false rent report, in whole or in part; or
- D. acted in some manner which is a clear abuse of the petition process.

2. The following shall not constitute bad faith under this provision:

- A. Miscalculations and simple mathematical errors; or
- B. Claims for expenses or other items which are not specifically addressed in this section and which the Commission disallowed, but which could plausibly have fallen within this section.

d. Determination of Bad Faith by Commission

The Commission shall verify the information upon which it makes its findings of bad faith and shall issue a decision clearly stating the basis for its finding. The landlords shall be required to notify all tenants affected by the rent rollback, and, if the landlord was permitted to increase rents by the rent stabilization allowance pending a decision on the fair return petition, all rent increases so collected shall be refunded to the affected tenants within 30 days. If the landlord fails to roll back the rents or fails to refund the rent increases collected, the affected tenants may begin paying the rolled-back rent or may deduct any rent refunds or rollbacks owed the tenants in accordance with paragraph a of this section.

9. Scope of Commission Authority in Setting Rents.

Notwithstanding any other provision of this ordinance or regulations instituted pursuant to this ordinance, the Commission shall be authorized to take into account any factors

which it is required to consider by law and grant whatever rent increase is constitutionally required in order to yield a fair return.

10. Burden of Proof.

The landlord shall have the burden of proof in demonstrating that a rent increase should be authorized pursuant to this Section.

Introduced by: Councilmember Snipper

First Reading:

23 July 2007

Second Reading:

Effective Date:

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2007-40

Amending Takoma Park City Code Chapter 6.20 Rent Stabilization

WHEREAS, the preservation of quality, affordable rental housing for community residents has been a long standing a priority of the Takoma Park City Council; and

WHEREAS, the City's rent stabilization law, enacted in 1980, is one component of the broader affordable housing programming supported by the Council; and

WHEREAS, the Council has conducted an extensive review of its rent stabilization laws, soliciting input from local landlords, tenants, affordable housing providers, and experts in the affordable housing field; and

WHEREAS, the Council wishes to continue to protect tenants from unwarranted rent increases, while allowing rent levels which provide landlords with a fair return;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, that

Section I

Effective December 1, 2007 Title 6, Housing, Chapter 6.20 of the *Takoma Park Code* is amended to read as follows:

Chapter 6.20 RENT STABILIZATION

6.20.010 Application of rent stabilization -- Scope, rent increases, notification requirements, annual reporting.

A. Application of Rent Stabilization.

The provisions of this chapter shall apply to all residential rental units except as provided in Sections 6.20.020, 6.20.030 and 6.20.040.

B. Rents – Rent Increases, Frequency, and Notification Requirements.

1. Rent Increases.

Rent increases shall be limited to the rent increase amounts authorized by this chapter for regulated rental units.

2. Frequency of Rent Increases.

Rents for any individual rental unit may not be increased more often than permitted by this chapter..

3. Notice of Rent Increases.

Notification of any rent increase authorized by this chapter shall be provided in writing to the tenant at least two months prior to the date the rent increase is to take effect.

C. Reporting of Rents.

Landlords must file an annual rent report with the Department on a form prescribed by the Department in accordance with Section 6.20.080.

6.20.020 Buildings exempted from rent stabilization without application for exemption.

A. Scope of Exemptions.

The provisions of this chapter shall not be applicable to the following:

1. Any unit in a licensed facility, the primary purpose of which is the diagnosis, cure, mitigation and treatment of illnesses;
2. Any unit in a facility owned or leased by an organization exempt from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, the primary purpose of which is to provide temporary sanctuary or shelter for qualified clients, provided that the

organization has notified the clients residing in the facility of the temporary nature of their housing at the inception of their residence;

3. Any owner-occupied group house;
4. Religious facilities such as churches, synagogues, parsonages, rectories, convents and parish homes;
5. Transient facilities such as hotels, motels, tourist homes, and bed and breakfast facilities; and
6. School dormitories.

6.20.030 Rental facilities granted partial exemption from rent stabilization without application for exemption.

A. Scope of Exemptions.

The provisions of this chapter shall not be applicable to the following rental facilities except as provided in paragraph B and C of this section:

1. Any building on a lot that contains only one dwelling unit; and
2. Any accessory apartment for which the Montgomery County Planning Board has granted a special exception.

B. Frequency of Rent Increases.

The rents for rental facilities and rental units described in paragraph A of this section may be increased only once within a twelve month period.

C. Notification Requirements.

Notification of any rent increase for rental units described in paragraph A of this section shall be provided in writing to the tenant at least two months prior to the date the rent increase is to take effect.

6.20.040 Rental facilities and rental units exempt from rent stabilization pursuant to an application for a grant of exemption.

A. Grant of Exemption.

The Department shall, upon application of the owner, grant an exemption from this chapter for the following rental units and rental facilities:

1. Rental units leased to tenants assisted under federal Tenant Based Assistance Programs under 42 U.S.C. § § 1437f and 11403 et. seq. or similar federally funded rent subsidy program. However, this exemption shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Montgomery County Housing Opportunities Commission or successor agency.
2. Any rental facility that is subject to a regulatory agreement with a governmental agency that controls the rent levels of one or more rental units so that they are available only to low and moderate income tenants.
3. Newly constructed rental units. For a period of five years after the issuance of a rental license, any newly constructed rental units first offered for rent after July 1, 2006.
 - a. Newly constructed rental unit shall mean any rental unit constructed that results in a net gain in the number of rental units at a property over the number of rental units at the property as of July 1, 2006, plus any rental units already added to the property, provided that the size of an existing rental unit or the indoor common areas of the rental facility is not reduced. The reconfiguration, renovation, change in description, or change in identification of a rental unit shall not result in a newly constructed rental unit.
 - b. Replacement rental units not exempt.
 - i. The maximum allowable rents applicable to pre-existing rental units shall be applicable to rental units that replace those units.
 - ii. A rental unit is a replacement rental unit unless the unit is a newly constructed rental unit as defined in this paragraph A.3.a of this section.
 - iii. If a replacement rental unit is smaller than the unit it replaces, the maximum allowable rent for the replacement unit shall be reduced by a percentage equal to the reduction in size of the unit.
4. All rental units in a building with 2 dwelling units in which the owner occupies one or more of the units as his or her principal residence, provided that the owner occupancy by the current owner or successive owners has been continuous and bona fide for a period of at least 24 months at the time a petition for an exemption is filed.

B. Termination of Exemption.

1. Exemptions granted pursuant to paragraphs A.1 and A4 of this section shall expire after one year or when the conditions entitling the facility to an exemption cease to exist, whichever shall first occur. The exemptions are renewable annually upon re-application.

Upon the termination of an exemption, the rental unit shall be subject to all of the provisions of this chapter.

2. Exemptions granted pursuant to paragraph A.2 of this section shall expire upon the termination of the agreement with the governmental agency entitling the rental facility to the exemption.

C. Rents upon Termination of Exemption.

1. For rental facilities and rental units receiving an exemption pursuant to paragraphs A.1 and A.2 of this section, upon the termination of the exemption, the base rent for the units and the reference point from which the rent ceiling shall be adjusted in accordance with this chapter shall be the allowable rent for each unit at the time the exemption commenced plus the annual rent stabilization allowance for each year that the unit was exempt.
2. For rental facilities and rental units receiving an exemption pursuant to paragraphs A.3 and A.4 of this section, upon the termination of the exemption, the base rent for the units and the reference point from which the rent ceiling shall be adjusted in accordance with this chapter shall be the rent for each unit set forth in the most recent annual rent report preceding the expiration of the exemption. For any unit is not rented when the exemption period terminates, the base rent shall be the rent charged when the unit is first rented to a tenant. If the actual rent paid by a tenant differs from the rent stated in the rent report or the lease, then the actual rent shall be the base rent.

D. Frequency of Rent Increases.

The rents of occupied rental units exempt from rent stabilization under this section may be increased once within any twelve month period.

E. Notice of Rent Increases.

For rental units receiving an exemption pursuant to paragraphs A.2, A. 3, and A.4 of this section, a landlord shall not increase or attempt to increase the rent for any rental unit without having first given the tenant living therein at least two months' written notice of the increase.

F. Annual Rent Reports.

Landlords must file annual rent reports for all rental units that are exempt from rent control under this section.

6.20.050 Establishment of Base Rent for Certain Units.

A. Reset of Base Rent for Owner-Occupied Condominiums.

When the owner or successive owners of a condominium unit occupies the unit for at least 24 consecutive months as his or her principal residence, then the owner may charge market rent for the unit when the owner next rents the unit to a tenant. The rent the owner charges the tenant shall establish the base rent for the unit until the owner again occupies the unit for at least 24 consecutive months. If the actual rent paid by the tenant differs from the rent stated in the lease, then the actual rent paid by the tenant shall be the base rent.

B. Rents Following Sale of a Condominium Unit.

The owner of a condominium unit that purchases a condominium unit in a bona fide arms length transaction may charge market rent for the unit when the owner first rents the unit to a tenant after purchasing the unit. The rent the owner charges the tenant shall establish the base rent for the unit until the owner occupies the unit for at least 24 consecutive months. If the actual rent paid by the tenant differs from the rent stated in the lease, then the actual rent paid by the tenant shall be the base rent.

C. Establishment of Base Rent for Rental Units Not Subject to Rent Stabilization on July 1, 2007.

For rental units that were not subject to rent stabilization on July 1, 2007, that become subject to rent stabilization pursuant to Ordinance No. 2007-40, the base rent shall be the rent charged for the unit when the unit is first rented to a tenant after July 1, 2007. If the actual rent paid by the tenant differs from the rent stated in the lease, then the actual rent paid by the tenant shall be the base rent.

6.20.060 Annual rent increases.

A. Annual Rent Stabilization Allowance.

1. The Department shall calculate an annual rent stabilization allowance and provide notice of the allowance to all landlords. The rent stabilization allowance shall equal the percentage increase in the Consumer Price Index-All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) from March in the preceding year to March in the current year. The CPI shall be the CPI published as of March in each year.
2. At any point during any twelve month period, commencing on July 1 of each year, the rent of a unit may be increased over the rent charged as of June 30 by the annual rent stabilization allowance.
3. Annual rent stabilization allowances that a landlord does not assess to the current tenant may be set aside and implemented in accordance with 6.20.070 when the unit becomes vacant.

B. Frequency of Rent Increases for Occupied Rental Units.

1. Only one rent increase pursuant to paragraph A.1 of this section shall be permitted within a twelve month period.
2. During the pendency of a fair return petition to increase rents above the rent stabilization allowance, rent increases up to the rent stabilization allowance may be taken in accordance with paragraph B.1 of this section. If an additional rent increase pursuant to a petition is subsequently approved by the Commission, the rent increase may be taken pursuant to the terms and the conditions of the Commission's administrative decision and final order.

C. Frequency of Rent Increases for Vacant Rental Units.

The rent for vacant rental units may be increased by the annual rent stabilization allowance prior to the leasing of the rental unit in accordance with paragraph A of this section.

D. Notice of Annual Rent Increases.

1. A landlord shall not increase or attempt to increase the rent for any occupied rental unit without having first given the tenant living therein at least two months' written notice of the increase.
2. Notice of a rent increase shall be in the form and manner prescribed by Department regulations.

6.20.070. Banking of authorized annual rent increases

A. Banking of Unused Rent Stabilization Allowances Authorized After 1992.

Notwithstanding the provisions of Section 6.20.060, a landlord may increase the rent for a vacant rental unit by the actual dollar amount of any annual rent stabilization allowances which were not charged to the tenant vacating the rental unit (hereinafter "unused rent stabilization increases"). Such increase may be taken if the rental unit became vacant as a result of a voluntary termination of the tenancy by the tenant or a termination of the tenancy by the landlord for cause. This rent increase may be in addition to any rent stabilization allowance increase that the landlord may impose on or after 12 months from the date of the last rent stabilization allowance increase for that rental unit.

B. Banking of Unused Rent Stabilization Allowances Authorized Prior to 1992.

1. Before a landlord may increase the rent for a vacant rental unit by the amount of any unused rent stabilization increases for any year or years prior to February 1, 1992, the landlord must submit verifiable documentation to the Department showing that the

unused rent stabilization increases were not previously charged to the rental unit. Examples of verifiable documentation are rent ledgers, copies of leases, and rent reports.

2. The Department must approve such documentation in writing before the landlord may increase the rent for a vacant rental unit by the amount of any unused rent stabilization increases for any year or years prior to February 1, 1992. The required documentation must be submitted 60 days in advance of the date of the proposed rent increase and must include the name and contact information of the tenant vacating the affected unit

6.20.080 Annual reporting requirements.

A. Reporting Requirements.

On or before September 30 of each year, each landlord shall complete and submit to the Department a rent report for the twelve month period ending on the preceding June 30 on a form provided by and in the manner prescribed by Department regulations.

B. Penalty for Failure to Comply with Reporting Requirements.

Failure to file a complete or accurate rent report by September 30 of each year shall constitute a violation of this chapter unless an extension of time for good cause is granted by the Department.

6.20.090 Rent increases pursuant to a fair return petition.

A. Fair Return Rent Increase.

Landlords have a right to petition for a rent increase in order to obtain a fair return. A fair return rent increase is intended to protect tenants from unwarranted rent increases, while allowing rent levels which provide landlords with a fair return.

B. Standards for Rent Increases Pursuant to a Fair Return Petition.

1. Fair Return. Fair return is defined as base year net operating income adjusted by 70% of the percentage increase in the Consumer Price Index (CPI) from the base year until 2007, and 100% of the percentage increase in the CPI since 2007.
2. Base Year. The landlord may select any of the following as the base year when petitioning for a fair return rent increase:
 - a. 1979, unless the property contains four or fewer dwelling units.
 - b. 1987, if the property contains four or fewer rental units.
 - c. 1990
 - d. 2000

3. Current Year. The current year shall either be the calendar year or the fiscal year (July 1-June 30) immediately preceding the date that the application is filed.
4. Current Year CPI. If the current year is a calendar year, the current year CPI shall be the Annual CPI for that year. If the current year is a fiscal year, the current year CPI shall be the CPI for December within the twelve month period including the fiscal year.
5. Net Operating Income. Net operating income equals gross income minus operating expenses.
6. Base Year Net Operating Income. The base year net operating income may be calculated, at the landlord's option, to equal 40% of the gross income of the rental facility in 1990.
7. Gross Income. Gross income is the annual scheduled rental income for the property based on the rents and fees (other than fees that are reimbursed by the tenants) the landlord was permitted to charge at the time of the application.
8. Operating Expenses. Operating expenses means all reasonable operating and maintenance expenses.

a. Operating expenses shall include, but not be limited to, the following:

- i. Utilities paid by the landlord, unless these costs are passed through to the tenants;
- ii. Administrative expenses, such as advertising, legal fees, accounting fees, etc;
- iii. Management fees, whether performed by the landlord or a property management firm;

It shall be presumed that management fees increased by the percentage increase in the CPI between the base year and the current year, unless the level of management services either increased or decreased during this period. Management fees shall not exceed 6% of gross income unless the landlord demonstrates by a preponderance of the evidence that a higher percentage is reasonable.

- iv. Payroll;
- v. Amortized cost of capital improvements;

An interest allowance shall be allowed on the cost of amortized capital expenses; the allowance shall be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate

equal to the Federal Reserve Board bank prime loan rate as of the date of the initial submission of the petition plus 2% per annum.

- vi. Maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section.
 - vii. Property taxes;
 - viii. Licenses, government fees and other assessments;
 - ix. Insurance costs;
- b. Reasonable operating and maintenance expenses do not include the following:
- i. Expenses for which the landlord has been or will be reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;
 - ii. Payments made for mortgage expenses, either principal or interest;
 - iii. Judicial and administrative fines and penalties;
 - iv. Damages paid to tenants as ordered by COLTA or the courts;
 - v. Depreciation;
 - vi. Late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental facility;
 - vii. Membership fees in organizations established to influence legislation and regulations;
 - viii. Contributions to lobbying efforts;
 - ix. Contributions for legal fees in the prosecution of class-action cases;
 - x. Political contributions for candidates for office;
 - xi. Any expense for which the tenant has lawfully paid directly or indirectly;
 - xii. Attorney's fees charged for services connected with counseling or litigation related to actions brought by the City under City regulations or Title 6, Housing, of this Code, as amended. This provision shall apply unless the landlord has prevailed in such an action brought by the City;

- xiii. Additional, expenses incurred as a result of unreasonably deferred maintenance;
and
- xiv. Any expense incurred in conjunction with the purchase, sale, or financing of the rental facility, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.
- c. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

C. Rent Increase Petition Based on Fair Return Standard.

1. Form of Petition.

Whenever a landlord proposes a rent increase of more than the amount permitted by Section 6.20.0560 of this chapter, the landlord shall file a petition with the Commission on a form provided by the Department.

2. Required Submission of Income and Expense Information.

The landlord shall be required to submit income and expense information for the two years prior to the current year with the petition.

3. Petition Restrictions.

Petitions filed pursuant to this section must address an entire rental facility. The landlord filing a petition must own the rental facility for the entire Current Year.

4. Adjustments to Petition – Base Year Net Operating Income.

a. Adjustment of Base Year Net Operating Income by Commission.

It may be determined that the Base Year Net Operating Income yielded other than a fair return, in which case the base year Net Operating Income may be adjusted. In order to adjust the Base Year Net Operating Income, the Commission must make at least one of the following findings:

- i. Base year net operating income was abnormally low due to one of the following factors:

- A. The landlord made substantial capital improvements which were not reflected in the base year rents and the landlord did not obtain a rent adjustment for these capital improvements;
 - B. Substantial repairs were made due to exceptional circumstances; or
 - C. Other expenses were unreasonably high, notwithstanding prudent business practice.
- ii. Base year rents did not reflect market transaction(s), due to one or more of the following types of circumstances:
 - A. There was a special relationship between the landlord and tenant resulting in abnormally low rent charges (such as a family relationship);
 - B. The rents had not been increased for five years preceding the base year;
 - C. The tenant lawfully assumed maintenance responsibilities in exchange for low rent increases or no rent increases; or
 - D. Other special circumstances which establish that the rent was not set as the result of an arms-length transaction.
- b. Establishment of a New Base Year Net Operating Income – Prior Year Petitions.

The net operating income, income, and expenses, determined to be fair and reasonable pursuant to a prior petition for a fair return rent increase, shall constitute the base year income, expenses, and net operating income in the new petition.

5. Consideration of Fair Return Petition by Commission.

a. Issuance of a Decision by the Commission.

The Commission shall, in good faith, endeavor to issue its preliminary administrative decision ruling on the request within 90 days of the review or hearing on the petition. Upon its determination of the rent increase to be granted to the landlord, the Commission shall issue a decision in accordance with Section 6.24.120 of this chapter and furnish a copy of the decision to the landlord.

b. Rejection of Petition.

i. The Commission shall not consider the landlord's fair return petition:

- A. Until the properly completed petition form, including required supporting documentation, has been submitted to the Commission;

- B. When the landlord has not properly registered the rental property with the City and/or when the landlord has outstanding fees or fines with the Department;
- C. When the landlord has not filed required rent reports for the 3 years prior to the filing date of the petition, provided that the Commission may, at its discretion, waive the above requirement for good cause shown;
- D. When the landlord has failed to comply with a final order of the Commission concerning any rental unit owned by the landlord in the City. However, the failure to comply with an order of the Commission shall not constitute a basis to decline to consider the landlord's request if the order has been appealed to the Circuit Court and no decision has been rendered on appeal.

- ii. If the Commission declines to consider the landlord's request it shall provide a written explanation for its action.

6. Ceiling on Fair Return Adjustments.

a. Fair Return Rent Increases on Occupied Rental Units.

Fair return rent increases shall not exceed 15% in any 12 month period. If the Commission awards a fair return rent increase greater than 15%, then the landlord may impose the remainder of the increase in subsequent years in increments not to exceed 15%.

b. Fair Return Rent Increases on Vacant Rental Units.

If the Commission determines that a rental unit requiring an increase of more than 15% is vacant or if the unit becomes vacant before the required rent increase has been taken in full, the Commission shall allow the required increase for that unit to be taken in one year or upon the vacancy of that unit, provided the unit became vacant as a result of a voluntary termination by the tenant or a termination of the tenancy by the landlord for cause.

7. Notification Requirements.

a. Notice of Petition for a Rent Increase.

The landlord shall provide written notification to each tenant affected by a proposed rent increase within one week after the filing date of the petition. Such notification shall include a copy of the petition form and a listing of all requested rent increases.

b. Notice of a Rent Increase Granted Pursuant to a Rent Increase Petition.

The landlord shall provide written notice to each affected tenant of the rent increase which has been authorized by the Commission, no less than two months prior to the date the proposed increase is to take effect. Said increase shall be contingent on the decision of the Commission becoming final in accordance with Section 6.24.120 and 6.24.130 of this chapter.

8. Rollbacks - Bad Faith Fair Return Petitions.

a. Authority to Require Rollback.

If, upon consideration of a fair return petition, the Commission finds that the adjusted base year net operating income included in the petition is less than the landlord's actual petition year net operating income and the fair return petition was filed in bad faith, the Commission may require the landlord to roll back the rents changed on the rental units covered by the petition to result in a net operating income equal to the adjusted base year net operating income.

b. Purpose of Rollbacks.

The purpose of the rollback provision in this subsection is to ensure that fair return petitions are filed in good faith, that the landlord reviews the records of the rental property for which rent increases are sought to ensure that a rent increase is justified under this section and to balance both the tenant and the landlord interests in each petition to increase rents above the rent stabilization allowance.

c. Definition of Bad Faith.

i. Bad faith can be found, but is not limited to, instances in which the landlord:

- A. listed expenses for repairs or services never performed;
- B. materially misrepresented expenses claimed;
- C. knowingly filed a false rent report, in whole or in part; or
- D. acted in some manner which is a clear abuse of the petition process.

ii. The following shall not constitute bad faith under this provision:

- A. Miscalculations and simple mathematical errors; or
- B. Claims for expenses or other items which are not specifically addressed in this section and which the Commission disallowed, but which could plausibly have fallen within this section.

d. Determination of Bad Faith by Commission

The Commission shall verify the information upon which it makes its findings of bad faith and shall issue a decision clearly stating the basis for its finding. The landlords shall be required to notify all tenants affected by the rent rollback, and, if the landlord was permitted to increase rents by the rent stabilization allowance pending a decision on the fair return petition, all rent increases so collected shall be refunded to the affected tenants within 30 days. If the landlord fails to roll back the rents or fails to refund the rent increases collected, the affected tenants may begin paying the rolled-back rent or may deduct any rent refunds or rollbacks owed the tenants in accordance with paragraph a of this section.

9. Scope of Commission Authority in Setting Rents.

Notwithstanding any other provision of this ordinance or regulations instituted pursuant to this ordinance, the Commission shall be authorized to take into account any factors which it is required to consider by law and grant whatever rent increase is constitutionally required in order to yield a fair return.

10. Burden of Proof.

The landlord shall have the burden of proof in demonstrating that a rent increase should be authorized pursuant to this Section.

Section II

1. Section 6.20.060.D, Petitions for Increases for Capital Improvements, of the *Takoma Park Code* is repealed immediately.
2. If a landlord made substantial progress toward the completion of a capital improvement before July 30, 2007, and completes the capital improvement between January 30, 2007, and December 1, 2007, then the landlord may petition for a rent increase to cover the cost of the capital improvement in accordance with the rent stabilization statute and regulations in effect as of July 29, 2007.

3. The Commission on Landlord-Tenant Affairs shall rule upon all capital improvement rent increase petitions for completed improvements pending on July 30, 2007, in accordance with the rent stabilization statute and regulations in effect as of July 29, 2007.
4. A landlord's failure timely to respond to requests by the Commission on Landlord-Tenant Affairs for documentation and information relating to a capital improvement rent increase petition shall constitute a waiver of the right to obtain a capital improvement rent increase.

Adopted this _____ day of _____, 2007, by roll-call vote as follows:

Aye:

Nay:

Absent:

Abstain: